

SERVED: May 19, 1992

NTSB Order No. EA-3559

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 30th day of April, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

STEVEN R. FISHER,

Respondent.

Docket SE-9829

OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge Jerrell R. Davis issued in this proceeding on November 21, 1989, at the conclusion of an evidentiary hearing.¹ By that decision the law judge reversed an order of the Administrator suspending respondent's airline transport pilot (ATP) certificate for 30 days on allegations that he carelessly operated a Shorts SD-360 aircraft by taxiing the aircraft to an airport ramp area using his

¹An excerpt from the hearing transcript containing the initial decision is attached.

emergency brakes, after having landed the aircraft following an in-flight hydraulic system failure. The Administrator alleged that, as a result, respondent violated section 91.9 of the Federal Aviation Regulations ("FAR"), 14 C.F.R. Part 91.²

The Administrator asserts on appeal that the law judge erred by reversing the order, as a preponderance of the evidence established respondent's carelessness during the taxiing operation. Respondent has filed a brief in reply in which he urges the Board to affirm the law judge's initial decision.³

Upon consideration of the briefs of the parties, and of the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. For the reasons that follow, we will grant the Administrator's appeal and reverse the law judge's initial decision.

²FAR section 91.9 provided at the time of the incident as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³Respondent asserts that even if the evidence establishes his carelessness, the allegation of a violation of FAR section 91.9 cannot be sustained because the Administrator should have charged him with a violation of FAR section 91.10, which deals with careless operation of aircraft for purposes other than air navigation. We disagree. Taxiing immediately after landing is an operation encompassed by section 91.9.

The facts underlying the Administrator's complaint are not in dispute.⁴ Respondent was the pilot-in-command of a training flight for United Express. During flight, the aircraft suffered a complete loss of hydraulic power.⁵ Respondent followed appropriate emergency procedures and landed at Sacramento Metropolitan Airport, which was the airport from which he had departed. During his landing, respondent did not use the emergency brake system and was able to slow the aircraft and clear the runway using reverse thrust from the engines. He then decided to taxi the aircraft to the gate area⁶ using emergency brake pressure and reverse thrust to control the airplane.

The unrebutted evidence establishes that respondent had been informed during ground school that he had 10 to 15 applications of brake pressure available from the emergency brake pressure.⁷ Respondent slowly entered the ramp area,⁸ keeping count of the number of brake applications as he

⁴The law judge made specific factual findings in his initial decision which have not been appealed by the Administrator.

⁵The loss of hydraulic pressure causes a loss of the use of the brakes, nose-wheel steering, landing gear, and flaps.

⁶Respondent testified that it is approximately one-half mile from the exit of the runway to the gate area.

⁷Respondent testified that he was so confident that he could use his emergency brakes that he decided to park the aircraft in the actual parking spot where it normally rests.

⁸The law judge accepted respondent's testimony that he taxied at less-than-normal speed.

proceeded. On the sixth application, the emergency brake accumulator pressure became depleted, and the aircraft was without brakes. Respondent was unable to control the aircraft. The aircraft collided with parked aircraft and a fence.

Neither the Aircraft Flight Manual, Crew Manual, Flight Standards manual, company training program, or emergency checklist specifically prohibit the taxiing of this aircraft using emergency accumulator pressure following a hydraulic failure. Nonetheless, respondent's employer suspended him for 30 days without pay as a result of this incident, finding that a more cautious approach would have been for respondent to have stopped the aircraft after clearing the runway and then call for ground assistance.

Respondent claims that he acted as a reasonably prudent pilot in deciding to taxi the aircraft to the terminal, having decided that if he stopped the aircraft short of the terminal he would have been unable to get a tow to the ramp because it was late at night. He admitted that had the aircraft been filled with passengers he would have taken the more cautious approach. Subsequent to this incident, respondent's employer amended the Aircraft Flight Manual to prohibit the taxiing of an aircraft using the emergency brake system after a loss of hydraulic pressure, unless the pilot determines that to do so would be the safest course because

of other considerations, e.g., the presence of other aircraft on the active runway.

The law judge ruled that respondent was not careless because his conduct was not proscribed by any written manual provisions, and relying on our decision in Administrator v. Cockes, 2 NTSB 1756 (1975), where we found that a pilot could rebut a presumption of negligence raised by a hard landing by showing that he had performed the landing in accordance with pilot training as set out in the then-applicable reference manual, and as evidenced by the fact that following the subject incident the training and reference manuals were amended to revise the instructions on landing to preclude similar types of landings in the future.

While the facts here may be similar to Cockes to the extent that, following this incident, the Shorts Flight Manual and company ground school training were revised to prohibit such operations in the future, the similarity ends there. In Cockes, the pilot was following landing procedures which were taught to him by his employer, but which later proved to be in need of revision. Here, it is not a question of whether respondent followed procedures which he reasonably believed to be proper. Instead, it is a question of whether respondent was reasonable in his decision to taxi the aircraft to the ramp area using his emergency brakes when he believed his emergency brakes would be adequate because of

training which he had received concerning their use. We do not think that it was. Nothing in the manuals or in his training led respondent to believe he was using the emergency brakes in an authorized manner. We conclude that Cockes does not require dismissal of the Administrator's order.

The issue before us is whether respondent's decision to attempt to taxi the aircraft to the terminal was careless, under the circumstances. We find that it was. There were no safety considerations which required respondent to taxi his aircraft to the terminal, which was quite a distance from the runway and necessitated several turns. While it may have been inconvenient for respondent and his company to arrange for a tow, the Board believes that a reasonably prudent pilot would have chosen this more cautious approach, and there is ample evidence in the record to support this conclusion. An FAA inspector testified that a prudent pilot would have stopped on the runway as soon as he or she could safely do so, and then call for a tow truck. The Director of Flight Operations for respondent's employer, though unwilling to label respondent's conduct "careless," conceded that he would have stopped the aircraft and called for a tow. Finally, even respondent admits that had the aircraft been filled with passengers, "it would have probably been more prudent to stop." (TR-145). While we agree that respondent, as an ATP certificate holder, owes the highest standard of care to his

passengers, he also owed a duty of care to the crew members on his training flight and his company, as well as to the owners of the aircraft parked at the terminal and the airport owners, whose property was damaged. We conclude that he breached that duty, and that his carelessness supports a finding of a violation of FAR section 91.9.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The law judge's oral initial decision is reversed;
3. The Administrator's order is affirmed; and
4. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days after service of this order.⁹

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁹For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).